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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,208	01/02/2002	Warren J. Warwick	39340.1.1.3	8599

7590 02/11/2003

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[REDACTED] EXAMINER

THANH, QUANG D

[REDACTED] ART UNIT [REDACTED] PAPER NUMBER

3764

DATE MAILED: 02/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/038,208	WARWICK ET AL. <i>M F</i>
Examiner	Art Unit	
Quang D. Thanh	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 02 January 2002.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-20 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 02 January 2002 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
 

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. 10/030447.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>5</u> .	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

### ***Priority***

1. Applicant's claim for domestic priority under 35 U.S.C. 119(e) is acknowledged. However, the provisional application upon which priority is claimed appears to be incorrect. The application no. should be 60/142,112 filed on 07/02/1999 (not 60/084,605). Please correct this under the section of "cross reference to related application".

### ***Oath/Declaration***

2. The oath or declaration is defective because it does not acknowledge the filing of any provisional application. A new oath, declaration or application data sheet is required in the body of which the present application should be identified by application number and filing date.

### ***Drawings***

3. The drawings are objected to under 37 CFR 1.83(a) because they fail to show cross-section 2(a) and end (2b) (p. 7, lines 26-27); driven shaft 24 (p. 7, line 29); collar 28 and set screw 30 (p. 8; line 3); and Figure 2b (p. 8, line 24) as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). In fig. 2, there is no label for 2(a) or 2(b) and structure 36a (below 32b) should be -- 34b --.

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4. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Double Patenting***

5. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

6. Claims 1-20 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 13-32 of copending Application No. 10/030447. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1-5, 8-9, 11-15 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Warwick et al (5,056,505).

9. Re claims 1-5, 11-15 and 18, Warwick discloses a chest compression apparatus (fig. 1-2) comprising: a mechanism comprising a bladder 14/16 for receiving pressurized air, a mechanism comprising a rotatory valve 22 adapted to interrupt periodically the air stream for supplying substantially sinusoidal wave form air pressure pulses (col. 7, lines 19-24) to the bladder as the frequencies approach 5 Hz the waveform is sinusoidal and therefore appear to comprehend the claim; a mechanism for venting 116 the pressurized air from the bladder (see abstract); an air flow generator component 26/62 , a pulse frequency control component 54 in communication with the air flow generator (fig. 2), a pressure control component 162 in communication with the frequency control component, a patient vest 16, wherein both pulse frequency control and pressure control components can be used by the patient (see abstract) or preset by the physician so as to deliver sinusoidal wave form compression pulses.

10. Re claims 8-9, Warwick further discloses the apparatus provides a maximum pressure of about 60 mm Hg or less (col. 6, lines 44-49 discloses that the pressure blower is capable of generating pressure up to 130 mm Hg, thus inherently suggests that it is capable of providing a maximum pressure of about 60 mm Hg if desired); and

the valve is used to establish and determine the rate and duration of air pulses (col. 6, lines 55-61).

11. Claims 1, 3-5, 8-9, 11, 13-15, and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Van Brunt (6,030,353). Van Brunt discloses a chest compression apparatus (fig. 1) comprising: a mechanism comprising a bladder 2 for receiving pressurized air, a mechanism comprising a valve 30 (col. 5, lines 36-47) adapted to interrupt periodically the air stream for supplying substantially sinusoidal wave form air pressure pulses (col. 5, lines 4-7) to the bladder; an air flow generator component 6 , a pulse frequency control component 44 in communication with the air flow generator (fig. 1), a pressure control component 24 in communication with the frequency control component (col. 5, lines 1-13), a patient vest 4 (fig. 1), wherein both pulse frequency control and pressure control components can be used by the patient or preset by the physician so as to deliver sinusoidal wave form compression pulses (col. 3, lines 8-18); the apparatus provides a maximum pressure of about 60 mm Hg or less (col. 5, lines 4-7 discloses that the pressure is about 1 PSI ~ 52 mm Hg) and the valve is used to establish and determine the rate and duration of air pulses (col. 5, lines 36-47).

#### ***Claim Rejections - 35 USC § 103***

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

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13. Claims 6-7, 10, 16-17 and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Warwick et al. Warwick discloses the claimed invention except for the weight of the apparatus. However, at the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to design the apparatus so that it can be weighted about 15 lbs or less, because by optimizing the weight of the apparatus such that it can be lighter would allow the user to use more conveniently. One of ordinary skill in the art, furthermore, would have expected that the device would perform equally well with either designs because the weight feature does not affect the performance of chest compression. Therefore, it would have been an obvious matter of design choice to modify the apparatus of Warwick to obtain the invention as specified in the claims. Moreover, it would have been obvious to one having ordinary skill in the art at the time the invention was made to optimize the weight of the apparatus such that it can be lighter , since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

14. Claims 6-7, 16-17 and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Brunt. Van Brunt discloses the apparatus being lightweight , relatively small, low cost and quiet, except for the exact weight of the apparatus. However, at the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to design the apparatus so that it can be weighted about 15 lbs or less, because by optimizing the weight of the apparatus such that it can be lightweight would allow the user to use more conveniently.

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One of ordinary skill in the art, furthermore, would have expected that the device would perform equally well with either designs because the weight feature does not affect the performance of chest compression. Therefore, it would have been an obvious matter of design choice to modify the apparatus of Van Brunt to obtain the invention as specified in the claims. Moreover, it would have been obvious to one having ordinary skill in the art at the time the invention was made to optimize the weight of the apparatus such that it can be lightweight, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

### ***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hayek (6,182,658 B1) discloses a fluid control valves that alters the shape of the waveform of the pressure pulses including the sinusoidal waveform. Hansen (5,453,081) discloses a medical device used to apply compressive force to a user's body to aid in loosening and elimination of mucus from the lung.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang D. Thanh whose telephone number is (703) 605-4354. The examiner can normally be reached on Monday-Thursday & alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (703) 308-2698. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

Quang D. Thanh  
Patent Examiner  
Art Unit 3764  
January 30, 2003

(QD)

Danton D. DeMille  
Primary Examiner